

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
1994 Annual Access) CC Docket No. 94-65
Tariff Filings)

OPPOSITION

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its Opposition to the Application for Review filed by AT&T Corp. ("AT&T") in the above captioned matter on July 25, 1994 regarding the price cap treatment of equal access costs.

In its Petition filed against the 1994 Annual Access Tariff Filings of local exchange carriers ("LECs"), AT&T questioned the lawfulness of the annual price cap tariff filings on the basis that LECs had failed to make an exogenous cost change to their price cap indices reflecting the expiration of the equal access and network reconfiguration ("EANR") expense amortization on December 31, 1993.¹ AT&T contended that these LECs should be required to reflect the expiration as an exogenous cost reduction. In its Tariff Order, the Bureau rejected this argument, finding that under the existing rules such cost changes are not required to be treated as exogenous and that, furthermore, the Commission had specifically rejected

¹ 1994 Annual Access Tariff Filings, Petition of AT&T Corp., filed April 26, 1994, pp. 1-9.

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exogenous treatment for such costs.² The Bureau had earlier reached the same conclusion in its Tariff Review Plan Order.³

AT&T now applies to the Commission for review of the Bureau's decision not to require LECs to make an exogenous cost reduction for EANR in the filings at issue. AT&T, however, fails to show that exogenous treatment for the costs at issue is required.

First, it is without dispute that the Commission rule which lists those specific cost changes which are required to be treated as exogenous does not include the EANR costs or the expiration of their amortization. A simple reading of the rule makes this conclusion inevitable. Of the specific cost changes enumerated in the rule, including the two specific amortization cost changes listed, none establishes equal access costs, their amortization, or the expiration of their amortization as exogenous.⁴

² 1994 Annual Access Tariff Filings, CC Docket No. 94-65; National Exchange Carrier Association Universal Service Fund and Lifeline Assistance Rates, Tr. No. 612, Memorandum Opinion and Order Suspending Rates (DA 94-706), released June 24, 1994 ("Tariff Order"), paras. 45-56.

³ Commission Requirements for Cost Support Material To Be Filed with 1994 Annual Access Tariffs and for Other Cost Support Material, Order (DA 94-165), released February 18, 1994, para. 22.

⁴ 47 U.S.C. Section 61.45(d) states, in pertinent part,

[t]he exogenous cost changes represented by the term "Delta-Z"...shall be limited to those cost
(continued...)

Secondly, the Commission, in the price cap rulemaking proceeding specifically addressed the treatment of equal access costs, stating:

In the LEC Price Cap Order, we decided to treat all equal access costs endogenously....⁵

The concern that led the Commission to deny exogenous treatment was

⁴(...continued)

changes that the Commission shall permit or require. (1) Subject to further order by the Commission, those exogenous changes shall include cost changes caused by

(i) the completion of the amortization of depreciation reserve deficiencies;

(ii) such changes in the Uniform System of Accounts as the Commission shall permit or require;

(iii) changes in the Separations Manual;

(iv) changes to the level of obligation associated with the Long Term Support Fund and the Transitional Support Fund...;

(v) the reallocation of investment from regulated to nonregulated activities...;

(vi) such tax law changes and other extraordinary exogenous cost changes as the Commission shall permit or require;

(vii) retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark; and

(viii) inside wire amortization.

⁵ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313), 6 FCC Rcd 2637 (1991) ("Price Cap Reconsideration Order"), para. 64 [emphasis added].

the incentives exogenous cost treatment could create to inflate the amounts spent on equal access....⁶

The Commission stated its belief that

the public interest is better served by creating a regulatory system that provides incentives for LECs to implement equal access in as efficient a manner as possible, recognizing that it is the carrier alone that is capable of controlling costs. Thus, we distinguish equal access costs from other costs that we treat as exogenous, such as rule changes, in which the cost change is derived solely from a change in regulation.⁷

Contrary to AT&T's contention, the Price Cap Reconsideration Order not only addressed the issue of exogenous treatment of equal access costs during the amortization period, but also the appropriate treatment at the end of the amortization period. In its Petition for Reconsideration⁸ of the initial LEC Price Cap Order,⁹ MCI had posed the following issue:

The Second Report and Order treats equal access costs as endogenous, pointing out that the largest carriers' equal access conversions are almost completed. That is probably correct as far as it goes. The rub is that the "associated costs" of such conversions "are embedded in existing rates." Under the Plan of Reorganization of AT&T approved by the MFJ Court, the conversion to equal access will be completed and the BOCs will have recovered the costs of such conversion - with AT&T reimbursing them for any remaining

⁶ Id.

⁷ Id., (emphasis added).

⁸ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Petition for Reconsideration, filed by MCI Telecommunications Corporation ("MCI") on November 21, 1990.

⁹ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC 6786 (1990) ("Second Report and Order").

unrecovered costs -- by January 1, 1994. When the conversion is complete, and no further costs are being incurred, the LECs' rates, which will be based on the current rates, will still reflect those discontinued costs. Accordingly, the Commission should require the LECs to adjust their PCIs in their 1994 price cap filings to remove the impact of their previous equal access costs on their rates.¹⁰

Thus, the issue which AT&T presents here was squarely presented to the Commission in the price cap rulemaking proceeding. The Commission could have revised its rules in that proceeding to require that the expiration of the EANR amortization period be treated as an exogenous change. However, the Commission decided to take the exact opposite course of action, resolving the issue as follows:

We also decline to adopt MCI's suggestion to treat BOC equal access costs in the same way we do amortizations, and require a downward adjustment in PCI levels in 1994 to eliminate all equal access costs. MCI argues that January 1, 1994, is the date when AT&T is required to reimburse the BOCs for any unrecovered equal access costs, and that the BOCs will have fully recovered their costs at that time....The issue to be addressed is whether the BOCs will experience any cost change in 1994 that stems from factors beyond their control. Under price cap regulation, we have not treated changes in depreciation levels as exogenous, so that when a piece of equipment is fully depreciated, there is no PCI change. Nor is there a PCI change if a carrier speeds up or slows down the rate at which it recovers investment. This is consistent with our view that the price cap index should be devoid of cost indicators over which the carriers exercise control. Based on the meager factual record presented on the issue of equal access costs, we are reluctant to depart from our

¹⁰ MCI Petition for Reconsideration, pp. 31-32 (footnotes omitted).

practice of not adjusting PCI levels to reflect levels of cost recovery.¹¹

In the Application for Review at issue here, AT&T is merely attempting to obtain review by the Commission of this very issue. The Application for Review is replete with an attempt to have the Commission reconsider its determination, made in the Price Cap rulemaking proceeding more than three years ago, to treat such costs the same as depreciation and not require exogenous treatment. As such, AT&T's request for a change in that determination comes too late.¹² Moreover, the Commission, having explicitly decided in the price cap rulemaking proceeding to treat "all equal access costs as endogenous,"¹³ including the expiration of the amortization,¹⁴ cannot now change this rule in this proceeding. The Commission has not had a new rulemaking proceeding to determine whether to change the existing rule. Having stated its decision to treat equal

¹¹ Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 6 FCC Rcd 2637 (1991), n. 77 [emphasis added].

¹² AT&T attempts to bolster its position by relying upon the Commission's reference in the Price Cap Reconsideration Order to the "meager factual record" in that proceeding. However, AT&T has not presented any new facts which would show that equal access costs, either while incurred, while amortized, or at the end of the amortization, have been any less "beyond the control" of LECs than the Commission in 1991 believed and expected them to be while incurred, while amortized and at the end of the amortization.

¹³ See n. 5, supra.

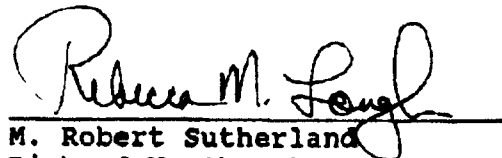
¹⁴ See discussion supra at pp. 4-5.

access the same as depreciation of investment, not requiring exogenous treatment but instead specifically requiring endogenous treatment, the Commission is "bound to follow those statements until such time as it alter[s] them through another rulemaking."¹⁵

For all of the foregoing reasons, the Commission should deny the Application for Review filed by AT&T. The issues presented by AT&T were already presented to and rejected by the Commission in the Price Cap rulemaking proceeding.

Respectfully submitted,

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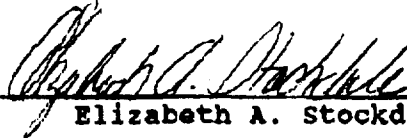
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Dated: August 9, 1994

¹⁵ Southwestern Bell Telephone Co. et al v. F.C.C.,
Case No. 93-1168 (D.C. Cir. July 12, 1994) slip. op., 7.

CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of August, 1994, served all parties to this action with a copy of the foregoing OPPOSITION by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.


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